

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. PENN 94-23
Petitioner : A.C. NO. 36-04566-03980
: :
22. : :
: :
CYPRUS EMERALD RESOURCES, INC., : Emerald No. 1
Respondent :

DECISION ON REMAND APPROVING SETTLEMENT

Before: Judge Hodgdon

On August 24, 1998, the Commission issued a decision in this case vacating the judge's conclusion as to Order No. 3658698 that Emerald violated section 77.1608(b) in December 1992, and remanded it for reanalysis [*sic*] and, if necessary, S&S and unwarrantable determinations. *Cyprus Emerald Resources Corp.*, Docket No. PENN 94-23, slip op. At 31 (August 24, 1998).¹ The Secretary, by counsel, has filed a motion to approve a settlement agreement with regard to the order.

Modification of Order No. 3658698 from a 104(d)(1) order, 30 U.S.C. ' 814(d)(1), to a 104(a) citation, 30 U.S.C. ' 814(a), by deleting the *unwarrantable failure* designation and a reduction in penalty from \$8,200.00 to \$6,000.00 are proposed. Having considered the representations and documentation submitted, I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act, 30 U.S.C. ' 820(i).

Accordingly, the motion for approval of settlement is **GRANTED**, Order No. 3658698 is **MODIFIED** as indicated and the Respondent is **ORDERED TO PAY** a penalty of \$6,000.00 within 30 days of the date of this order.

T. Todd Hodgdon
Administrative Law Judge

¹Forthcoming as *Cyprus Emerald Resources Corp.*, 20 FMSHRC 790 (August 1998).

Distribution

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